

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

Intermountain Waste Oil Refinery Site
Bountiful, Utah
SSID #08-5G, Operable Unit 1

UNILATERAL ADMINISTRATIVE
ORDER FOR REMEDIAL ACTION

U.S. EPA Region 8
CERCLA
Docket No. **CERCLA-08-2003-0013**

Intermountain Oil Company,
Respondent

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order for Remedial Action ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended, ("CERCLA") and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegations No. 14-14-A and 14-14-B and to the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation by EPA Region 8 Delegations No. 14-14-A and 14-14-B and to the Director of the Superfund Remedial Program in the Office of Ecosystems Protection and Remediation by EPA Region 8 EPR Delegations No. 14-14-A and 14-14-B.
2. This Order pertains to property located at 995 South 500 West in Bountiful, Utah (the "Intermountain Waste Oil Refinery Site" or the "Site"). This Order requires Intermountain Oil Company ("Respondent"), the current owner of the Site, to conduct the remedial action described herein.
3. EPA has notified the State of Utah of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to, and is binding upon, Respondent and Respondent's directors, officers, employees, agents, receivers, trustees, successors, and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.
5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

6. On May 11, 2000, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.
7. To study and undertake response activities in phases, EPA divided the Site into operable units. The operable units for the Site are Operable Unit 1 (OU1), covering soils, tanks, containers and other potential contamination sources, and Operable Unit 2 (OU2) covering groundwater. This Order addresses OU1.
8. From about March, 2001 to about August, 2002, EPA undertook a Remedial Investigation and Feasibility Study. ("RI/FS") for OU1 at the Site, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.
9. Pursuant to Section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action in August, 2002, and provided opportunity for public comment on the proposed remedial action.
10. The decision by EPA on the remedial action to be implemented at OU1 of the Site is embodied in a final Record of Decision ("ROD"), executed on November 26, 2002, on which the State has given its concurrence. The ROD is attached to this Order as Attachment 1 and is incorporated herein by reference. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.
11. Investigations at the Site found elevated levels of volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and total petroleum hydrocarbons. The highest concentrations of VOCs detected were 1,2,4-trimethylbenzene and naphthalene and the highest concentration of SVOC detected was 2-methylnaphthalene.
12. The risk assessment determined that there is an unacceptable risk from potential inhalation exposure to contaminated vapors that intrude from soil into indoor air.

13. EPA Emergency Response personnel conducted removal activities at the Site in August 2001. EPA removed and disposed of numerous containers and their contents and contaminated debris.

14. The selected remedy for OU1 of the Site requires that a land use control be established. The land use control would require that any building that is constructed on the Site, or any portion of the Site, be constructed with a system to prevent soil vapors from entering the building or with a system that would vent to the atmosphere any soil vapors that enter the building.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
- g. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

16. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VI. NOTICE OF INTENT TO COMPLY

17. Respondent shall notify EPA in writing within 3 days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

VII. WORK TO BE PERFORMED

18. Within 30 days of the effective date of this Order, Respondent shall execute and record in the Clerk and Recorder's Office for Davis County, Utah the land use control document attached hereto and incorporated herein as Attachment 2. Within 30 days after the document is recorded, Respondent shall provide a copy of the recorded document to EPA. If timely performance of any obligation under this Order is delayed, Respondent's shall notify EPA, before the end of the time period provided to perform such obligation, if a *force majeure* event will prevent timely performance of the obligations under this Order. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, (such as need to acquire State signature on the land use control document,) or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations.

VIII. DOCUMENTATION, AVAILABILITY OF INFORMATION

19. Within 30 days of completion of the Work under this Order, Respondent shall provide all documents and information relating to work performed under this Order to EPA.

20. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7).

IX. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

21. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

X. RESERVATION OF RIGHTS

22. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XI. OTHER CLAIMS

23. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

24. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

25. Nothing in this Order shall constitute a satisfaction of, or release from, any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XII. NOTICE OF COMPLETION

26. When EPA determines, after EPA's review of the documents submitted pursuant to Paragraph 18, that all actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Failure by Respondent to correct the deficiencies shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

27. The Administrative Record supporting these actions is available for review at:

Davis County Library
725 South Main Street
Bountiful, Utah 84010
The contact is Brad Maurer at 801-295-8732.

XIV. OPPORTUNITY TO CONFER

28. Within (5) days after issuance of this Order, Respondent may request a conference with EPA. Any such conference shall be held prior to the effective date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

29. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within (7) days following the conference, or within (5) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Richard Sisk, Attorney at 303-312-6638.

XIX. EFFECTIVE DATE

30. This Order shall be effective five (5) days after the Order is signed by the Regional Administrator or his or her delegatee.

IT IS SO ORDERED

BY: SIGNED DATE: 9/18/03
Dale Vodehnal, Director
Superfund Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency
Region 8

EFFECTIVE DATE: 9/23/03

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 18, 2003